



**Presented to KHPA Board November 18, 2008
Update on Directors and Officers (D&O) Liability Insurance**

1. Background

The KHPA Board has asked whether it can purchase Directors and Officers (D&O) liability insurance coverage for itself and its officers. The D&O liability insurance policy that KHPA would purchase would cover the cost of a defense and would allow the Board and officers to have a voice regarding choice of legal counsel.

Phil Elwood, Board Counsel, and Ann Ruselowski, KHPA General Counsel, met with the Committee on Surety Bonds and Insurance ("Committee") several times regarding the KHPA Board's desire to purchase D&O liability insurance coverage.

2. Meetings before the Committee on Surety Bonds and Insurance on October 13 and November 17, 2008

Mr. Elwood and Ms. Ruselowski appeared before the Committee on October 13, 2008. After extensive discussion the Committee agreed to authorize issuance of a request for information (RFI). Material was sent out to potential providers of such insurance coverage. As of the morning of November 17, we are advised that two responses have been received. We met with the Insurance Committee, which reviewed those responses and voted to let the KHPA Board proceed to include funding for D&O insurance in its 2009 budget if it chooses to do so. The Insurance Committee will next consider the issue if KHPA receives funding for the premiums as part of its appropriation by the legislature.

K.S.A. 75-4114 restricts expenditures on liability insurance for state agencies to those purchases "within the limitations of appropriations made by the legislature therefore" The limitations of K.S.A. 75-4114 are based on the appropriations made by the Legislature, therefore, it would be necessary for KHPA to include funding for the D&O coverage in its budget/funding request.

The statutory authority granted to KHPA by K.S.A. 75-7403 states, "[t]he Kansas Health Policy Authority may enter into contracts as may be necessary to perform the powers, duties, and functions of authority and as provided by law." This is sufficiently broad to include expenditure of state-appropriated funds for D&O insurance, however, it appears necessary to comply with K.S.A. 75-4114 in terms of legislative appropriations. The state of Oklahoma has granted specific statutory authority to purchase insurance. It should not be necessary to do the same here, but if it becomes necessary, there is precedent for proposing such legislation.

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